

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

HORTON HOMES, INC.,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.
)	2:07-CV-506-MEF
)	
LARUE BANDY, MARIE BANDY,)	
PATRICK PRITCHETT, WILLIAM)	
SHANER, ELSIE FONDREN)	
AVERETTE, WILLIAM CRUTHIRDS,)	
and SHERRIE CRUTHIRDS,)	
)	
Defendants.)	
)	

FIRST AMENDMENT TO COMPLAINT

Plaintiff Horton Homes, Inc. ("HHI") pursuant to Fed. R. Civ. P. 15(a), files this First Amendment to its Complaint against Defendants Larue Bandy, Marie Bandy, Patrick Pritchett, William Shaner, Elsie Fondren Averette, William Cruthirds, and Sherrie Cruthirds (collectively, the "Defendants"). No responsive pleadings have been filed in this case, which was initiated by HHI on June 8, 2007. Therefore, Fed. R. Civ. P. 15(a) permits amended pleadings "as a matter of course" and without leave of Court.

HHI hereby amends its Complaint by replacing Paragraphs 5, 12, 13, 18, and 68 thereof with the following:

I. PARTIES.

5.

Defendant William Shaner is a natural person who, upon information and belief, previously resided at 111 Thrasher Road, Elmore County, City of Wetumpka, Alabama 36092, before moving to New York. Upon information and belief, Defendant William Shaner currently resides at 46 Defiance Street, Essex County, City of Ticonderoga, New York 12883. On June 5, 2007, Defendant William Shaner returned to the Middle District of Alabama to attend a hearing for an arbitration which is the subject of Counts V and VI which arbitration Defendant William Shaner is pursuing in this District. This Court has long-arm jurisdiction over Defendant William Shaner, pursuant to Alabama Rule of Civil Procedure Rule 4.2(b).

II. JURISDICTION AND VENUE.

12.

For purposes of determining diversity of citizenship pursuant to 28 U.S.C. § 1332(a)(3), there is complete diversity of citizenship between HHI, on the one hand, and Defendants, on the other hand. HHI is a citizen of the State of Georgia, because it is incorporated under the laws of Georgia and has its principal place of business in Georgia. 28 U.S.C. § 1332(c)(1). Each of the Defendants is a natural person who is a resident citizen of the State of Alabama, except for Defendant

William Shaner, who is a natural person that is a resident citizen of the State of New York. Therefore, this Court has jurisdiction over this case, pursuant to 28 U.S.C. § 1332.

13.

Each of the Defendants is subject to the venue of this Court pursuant to 28 U.S.C. § 1391(a)(2), because, upon information and belief, a substantial part of the events or omissions giving rise to HHI's claims in this action occurred in the Middle District of Alabama, and because a substantial part of the property that is the subject of this action is situated in the Middle District of Alabama, as follows:

- (a) Defendants Larue Bandy and Marie Bandy (collectively, the "Bandy Defendants") reside in the Middle District of Alabama; purchased a manufactured home from H&S Homes in the Middle District of Alabama, which manufactured home is presently located on land located in the Middle District of Alabama; and chose to assert claims against HHI in an arbitration that will occur in the Middle District of Alabama, and which is the subject of Counts I and II.
- (b) Defendant Patrick Pritchett resides in the Middle District of Alabama; purchased a manufactured home from H&S Homes in the Middle District of Alabama, which manufactured home is presently located on land located in this District, and chose to assert claims against HHI

in an arbitration proceeding that will occur in this District and which is the subject of Counts III and IV.

(c) Defendant William Shaner resided in the Middle District of Alabama before moving to New York. Defendant William Shaner alleges that he purchased a manufactured home from H&S Homes in this District, which manufactured home is presently located on land located in this District. Defendant William Shaner is asserting claims against HHI in an arbitration. The hearing for this arbitration occurred in this District on June 5, 2007, where Defendant William Shaner was physically present and gave live testimony. This arbitration is the subject of Counts V and VI.

(d) Defendant William Cruthirds and Defendant Sherrie Cruthirds (collectively, the "Cruthirds Defendants") and Defendant Elsie Averette reside in Alabama; purchased manufactured homes from H&S Homes in Alabama, which manufactured homes are presently located in Alabama; and chose to assert claims against HHI in arbitrations that will occur in the Middle District of Alabama, which arbitrations are the subject of Counts IX and X respecting the Cruthirds Defendants, and Counts VII and VIII respecting Defendant Averette.

III. FACTS COMMON TO ALL COUNTS.

A. Defendants' Purchase of Manufactured Homes from H&S Homes.

18.

Each of the Defendants purchased from H&S Homes, in Alabama, a manufactured home that was built by HHI. Each of the Defendants effected the purchase of a manufactured home from H&S Homes by entering into a "Retail Installment Contract" with H&S Homes, as described below:

- (a) On or about April 12, 1999, the Bandy Defendants purchased a manufactured home from H&S Homes at a sales lot located in the Middle District of Alabama. The Bandy Defendants effected this purchase by entering into a "Retail Installment Contract" that contains a provision requiring arbitration of any claims arising out of or relating to that contract. Attached hereto as Exhibit "A" is a copy of the pages of the H&S/Bandy Arbitration Agreement that contain the arbitration provision (the "H&S/Bandy Arbitration Agreement"). Upon information and belief, this manufactured home was moved to a lot in the Middle District of Alabama, where it is currently located.
- (b) On or about June 4, 1999, Defendant Patrick Pritchett purchased a manufactured home from H&S Homes at a sales lot located in the Middle District of Alabama. Defendant Patrick Pritchett effected this

purchase by entering into a "Retail Installment Contract" that contains an "Arbitration Agreement". Attached hereto as Exhibit "B" is a copy of the H&S/Pritchett Arbitration Agreement (the "H&S/Pritchett Arbitration Agreement"). Upon information and belief, this manufactured home was moved to a lot in the Middle District of Alabama, where it is currently located.

- (c) On or about October 12, 1999, Defendant William Shaner allegedly purchased a manufactured home from H&S Homes. Defendant William Shaner allegedly effected this purchase by allegedly entering into a "Retail Installment Contract" that contains an "Arbitration Agreement". Attached hereto as Exhibit "C" is a copy of the H&S/Shaner Arbitration Agreement (the "H&S/Shaner Arbitration Agreement"). Upon information and belief, this manufactured home was moved to a lot in the Middle District of Alabama, where it is currently located.

- (d) On or about June 17, 2000, Defendant Elsie Averette purchased a manufactured home from H&S Homes. Defendant Elsie Averette effected this purchase by entering into a "Retail Installment Contract" that contains an "Arbitration Agreement". Attached hereto as

Exhibit "D" is a copy of the H&S/Averette Arbitration Agreement (the "H&S/Averette Arbitration Agreement").

- (e) On or about March 31, 2000, the Cruthirds Defendants purchased a manufactured home from H&S Homes. The Cruthirds Defendants effected this purchase by entering into a "Retail Installment Contract" that contains an "Arbitration Agreement". Attached hereto as Exhibit "E" is a copy of the H&S/Cruthirds Arbitration Agreement (the "H&S/Cruthirds Arbitration Agreement").

COUNT V

Complaint for Declaratory Judgment Against Defendant William Shaner

68.

Despite demand by HHI's counsel, Defendant William Shaner has refused to withdraw HHI from Defendant Shaner's Demand for Arbitration. Instead, Defendant William Shaner has proceeded with his purported arbitration against HHI. An arbitration hearing was held in the Middle District of Alabama on June 5, 2007, and the parties to that arbitration are currently submitting additional evidence, followed by post-hearing briefs and filings that are due by June 24, 2007. At the outset of the hearing, HHI moved for dismissal on the grounds that the arbitrator lacked jurisdiction to arbitrate disputes involving HHI because it is not a party to any arbitration agreement. Notwithstanding this objection, the arbitrator

went forward with the hearing and deferred ruling on HHI's jurisdictional objection motion.

Dated this 26th day of June, 2007.

/s/ Sydney F. Frazier, Jr.

Sydney F. Frazier, Jr. (FRA007)

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing First Amendment to Complaint has been filed using the CM/ECF system and copies have been served pursuant to FRCP Rule 5(a) and (b)(2)(B) by mailing a copy thereof by United States mail, first class postage prepaid, to the last known addresses of defendants below.

Larue Bandy
329 Main Street
Hayneville, Alabama 36040

Marie Bandy
329 Main Street
Hayneville, Alabama 36040

Patrick Pritchett
Route One, Box 126
Fitzpatrick, Alabama 36029

William Cruthirds
875 Lynch Lake Road
Odenville, Alabama 35120

Elsie Fondren Averette
56 Bear Creek Road
Brent, Alabama 35034

Sherrie Cruthirds
875 Lynch Lake Road
Odenville, Alabama 35120

Service thereof on William Shaner shall be by personal service at his address as follows:

William Shaner
46 Defiance Street
Ticonderoga, New York 12883-1433

This 26th day of June, 2007.

/s/ Sydney F. Frazier, Jr.
Of Counsel